In the High Court of Judicature at Madras

Dated: 13/02/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.46942 of 2002
and
WPMP.No.68137/02 & WVMP.No.240/03

A. Thiagarajan
Prop. Sri Venkateswar Agency
Chinthamani Nagar
Athoor Main Road
Ayodhyapattinam
Salem 636 103. .. Petitioner

-Vs-

1. Indo Burmah Petroleum Corporation
Ltd., rep. by its Divisional Manager
Chetput, Chennai 600 031.

2. The District Revenue Officer
Salem. .. Respondents

For petitioner : Mr. R. Thiagarajan,Sr.Counsel
for M/s. M. Muthappan

For respondents: Mr. K. Kumar
Addl.Central Govt., Standing
Counsel for R.1

Mr. R. Chandrasekaran
Government Advocate for R.2

:ORDER
By consent of all the parties, the main writ petition itself is taken up for final disposal.

2. Aggrieved by the no objection certificate issued by the District Revenue Officer, Salem - second respondent herein on 14.11.2002, to IBP Company Ltd., Chennai - first respondent herein, for the installation of tanks for the storage of petrol and diesel at S.No.257/3A and 257/3B, Masinaickenpatti Village, Vazhapadi Taluk, the petitioner has filed the above writ petition to quash the same.

3. According to the petitioner, the National Highway-68 connects Attoor and Salem. The State Highway from Harur joins NH-68 at a point where the petitioner had installed his BPCL Petrol and Diesel outlet in Chinthamani Nagar. It was started in the year 1996. Due to various Companies / agents in and around, particularly on the NH.68, the petitioner wrote to the Collector, Salem, District Revenue Officer, Salem, stating that the installation of first respondent Company at the place where it has started its work was not in accordance with the guidelines prescribed for erecting the retail outlet. In other words, the new retail outlet proposed to be established by the first respondent is within 1 k.m. of intersection on Highways and also within 1 k.m. of an existing check barriers, which is contrary to the guidelines. Since there is no positive response with reference to the representations / complaints, filed the present writ petition before this Court.

4. While admitting the above writ petition on 31.12.2002, this Court in WPMP.No.68137 of 2002 granted interim injunction and ordered notice to the respondents. Pursuant to the said notice, the first respondent IBP Company Ltd., filed WVMP.No.240 of 2003 for vacation of the said interim order.

5. In the counter affidavit filed by the first respondent it is stated that the first respondent has already opened the out let in Survey No.257/3A and 257/3B of Masinaickenpatti Village, Vazhapadi Taluk. Further, the allegation of the retail outlet as shown in the rough plan filed in the typed set of documents is purely self serving in nature. As a matter of fact, the guidelines would speak about the check barrier and not check post and therefore the stand taken by the petitioner has to be rejected. The minutes of National Highways dated March 2002 have not assumed statutory character and since it has not reached the finality. No Objection Certificate has been issued under the Petroleum Act and Petroleum Rules in favour of the IBP Company Ltd., by the Additional District Magistrate - District Revenue Officer, Salem, after proper investigation and satisfaction, that too after enquiry and after consideration of all the materials.

6. Mr. R. Thiayagarajan, learned senior counsel for the petitioner, after drawing my attention to the plan showing the new IBP retail outlet, forest check post and police check post in the plan would contend that the existence of IBP retail outlet in the present place comes within the prohibitory distance of 1 k.m. from the check post. Accordingly, the same is contrary to the guidelines prescribed by the National Highways. Except the said contention, no other contention has been raised with regard to grant of No Objection Certificate to the first respondent.

7. In the light of the said contention, I have verified the plan annexed in the typed set of papers (vide page 14). It is true that the plan shows the existence of forest and police check post and according to the petitioner, the IBP Company's outlet comes within the prohibitory distance of 1 k.m. First of all, there is no authenticity regarding the plan produced in the typed set filed by the petitioner. Secondly, as rightly contended by Mr.

K. Kumar, learned Additional Central Government Standing Counsel, the guidelines speak about the check barrier and not check post. Even otherwise, it is asserted by the Divisional Manager, IBP Company Limited that the minutes of National Highways dated March, 2002 have not been reached its finality and the same cannot be assumed as statutory character. As rightly pointed out, it is to be noted that the No Objection Certificate has been issued under the Petroleum Act and Rules in favour of the first respondent by the Additional District Magistrate - District Revenue Officer at the place in question, after due enquiry and after consideration of all the materials.

8. Mr. K. Kumar, learned Additional Central Government Standing Counsel has also relied on the judgment of the learned single Judge of Karnataka High Court rendered in W.P.No.3618 of 1990 dated 28.06.1990. While considering the similar objection, the learned Judge arrived a conclusion that the legality of the permission to set up a trade or business cannot be examined at the instance of a rival trader in a writ petition. Further, the learned Judge has held that the Code on which reliance is placed, is an administrative instruction which does not confer any right on the petitioner to challenge the permission granted to a rival trader. After holding so, declined to entertain similar writ petition. The said view of the learned single Judge has been affirmed by the Division Bench of the same High Court in W.A.No.18 71 of 1990 dated 14.11.1990. I am in respectful agreement with the above view.

9. As stated earlier, first of all, it is not clear whether there is any check barrier or check post and whether the same is permanent, semi-permanent or a temporary in nature. Further, inasmuch as the minutes of the National Highways, namely the guidelines have not reached its finality. In such a circumstance, the guidelines cannot be equated like a statutory rules.

In the light of what is stated above, there is no merit in the claim made by the petitioner; consequently, the writ petition fails and the same is dismissed. No costs.

In view of the dismissal of the main writ petition, connected WPMP and WVMP., are dismissed.

Index:Yes
Internet:Yes
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13.02.2003

To
1. Indo Burmah Petroleum Corporation Ltd., rep. by its Divisional Manager Chetput, Chennai 600 031.

2. The District Revenue Officer

Salem.